

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Salis	Team: Squad #4	CCRB Case #: 201900845	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/28/2019 3:18 PM	Location of Incident: [REDACTED]	Precinct: 44	18 Mo. SOL 7/28/2020	EO SOL 3/14/2021	
Date/Time CV Reported Mon, 01/28/2019 3:49 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 01/28/2019 3:49 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Kenny Victoria	21225	960051	044 PCT
2. POM Ariel Lora	883	955092	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kenny Victoria	Abuse: Police Officer Kenny Victoria stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
B.POM Ariel Lora	Abuse: Police Officer Ariel Lora stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
C.POM Kenny Victoria	Abuse: Police Officer Kenny Victoria threatened to arrest § 87(2)(b)	[REDACTED]
D.POM Ariel Lora	Abuse: Police Officer Ariel Lora questioned § 87(2)(b)	[REDACTED]
E.POM Ariel Lora	Abuse: Police Officer Ariel Lora searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
F.POM Kenny Victoria	Abuse: Police Officer Kenny Victoria questioned § 87(2)(b)	[REDACTED]
G.POM Kenny Victoria	Abuse: Police Officer Kenny Victoria searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	[REDACTED]
H.POM Ariel Lora	Abuse: Police Officer Ariel Lora questioned § 87(2)(b)	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On January 28, 2019, § 87(2)(b) called the CCRB and filed this complaint on behalf of himself, § 87(2)(b) and § 87(2)(b) was not cooperative with this complaint and § 87(2)(b) provided a statement to the CCRB.

On January 28, 2019, at approximately 3:18 PM, at the intersection of Neslon Avenue and 168th Street in the Bronx, PO Kenny Victoria and PO Ariel Lora, both of the 44th Precinct, stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegations A and B: Abuse of Authority**, § 87(2)(g) PO Victoria instructed the car's occupants to exit, § 87(2)(b) and § 87(2)(b) exited the car, and § 87(2)(b) remained in the car. PO Victoria told § 87(2)(b) "Listen, get out of the car. If not, you're coming back to the precinct" (**Allegation C: Abuse of Authority**, § 87(2)(g) § 87(2)(b) exited the car and PO Lora asked him, "Do you have anything you're not supposed to have?" (**Allegation D: Abuse of Authority**, § 87(2)(g) PO Lora searched the passenger compartment, center console, and glove compartment of the car (**Allegation E: Abuse of Authority**, § 87(2)(g) PO Victoria asked § 87(2)(b) "No weapons in the car, right?" (**Allegation F: Abuse of Authority**, § 87(2)(g) § 87(2)(b) and § 87(2)(b) re-entered the car. PO Victoria searched the car's trunk and underneath the trunk floor (**Allegation G: Abuse of Authority**, § 87(2)(g) PO Lora asked § 87(2)(b) "You got nothing in the car?" (**Allegation H: Abuse of Authority**, § 87(2)(g) § 87(2)(b), § 87(2)(g)

§ 87(2)(b) was issued Summons #§ 87(2)(b) (BR 01) for being parked in a no stopping or no standing zone. No other individual was arrested or issued a summons in regards to this incident.

The CCRB received three Body Worn Camera videos related to this incident, which are located in Investigative Actions #89-91.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kenny Victoria stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer Ariel Lora stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) (BR 02) testified that he was pulled over on a street, the name of which he did not recall, ahead of, and not obstructing, a bus stop. § 87(2)(b) was seated in the front driver seat and § 87(2)(b) was seated in the rear. § 87(2)(b) pulled out of his parked position, made a left turn on to Ogden Avenue, and was pulled over by PO Victoria and PO Lora. PO Lora told § 87(2)(b) that he had been pulled over because he had been parked at the bus stop. § 87(2)(b) told PO Lora that he was pulled ahead of the bus stop and had not been parked.

Attempts to contact § 87(2)(b) (BR 03) and § 87(2)(b) (BR 04) in regards to this complaint were unsuccessful.

None of the available video evidence captures the period during which the alleged traffic infraction was said to have occurred. In PO Victoria's Body Worn Camera footage (BR 07), from 0:30 to 1:20, PO Victoria approaches the front driver side window. PO Victoria states, "How's it going gentlemen. You know why I'm here. I can still see the smoke. You can smell the marijuana. But also you were stopped at the bus stop." § 87(2)(b) states, "There is no

marijuana.” PO Victoria states, “Are you serious.” § 87(2)(b) states, “We wasn’t double parked.” PO Victoria responds, “I didn’t say double parked. You were blocking the bus lane, big man.”

§ 87(2)(b) was issued Summons #§ 87(2)(b) (BR 01) for being parked in a no standing zone.

PO Victoria (BR 05) and PO Lora (BR 06) both testified that they stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants because they observed the car parked at a bus stop.

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (C) Abuse of Authority: Police Officer Kenny Victoria threatened to arrest § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Ariel Lora questioned § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Ariel Lora searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (F) Abuse of Authority: Police Officer Kenny Victoria questioned § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer Kenny Victoria searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (H) Abuse of Authority: Police Officer Ariel Lora questioned § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were removed from their car, officers questioned the car’s occupants, PO Lora searched the passenger compartment, and PO Victoria searched that car’s trunk.

§ 87(2)(b) (BR 02) testified that, when PO Victoria and PO Lora approached, PO Lora asked the car’s occupants if they possessed anything that they were not supposed to have. § 87(2)(b) responded that they did not. PO Lora stated that he smelled marijuana in the vehicle and instructed the car’s occupants to exit. § 87(2)(b) and § 87(2)(b) moved to the rear of the car and stood with PO Victoria. PO Lora stated that he had seen smoke coming from the vehicle and § 87(2)(b) denied that there was smoke in the vehicle. PO Lora searched the car’s footwells, center console, seats, glove box. § 87(2)(b) alleged that PO Lora opened and searched the car’s trunk, although Body Worn Camera footage show that PO Victoria searched the car’s trunk. After the search, § 87(2)(b) and § 87(2)(b) re-entered the car, PO Victoria issued § 87(2)(b) a parking summons, and the officers left the scene. During his CCRB interview, § 87(2)(b) stated that neither he nor § 87(2)(b) have ever smoked marijuana in § 87(2)(b)’s vehicle, they were not smoking marijuana or cigarettes prior to the incident, and there was no smoke in the car when officers pulled them over.

In PO Victoria’s Body Worn Camera footage (BR 07), between 1:50 and 2:20, PO Lora states that there is a strong smell of marijuana and PO Victoria states there is still smoke visible in the car. PO Victoria states, “Listen, get out of the car. If not, you’re coming back to the precinct.” § 87(2)(b) exits the car and the car’s occupants are brought to the rear of the car. Between 7:20 and 7:40, PO Victoria asks § 87(2)(b) “No weapons or none of that in the car, right?” § 87(2)(b) responds, “No.” Between 11:50 and 12:50, PO Victoria searches the car’s trunk and underneath the trunk’s floor.

In PO Lora's Body Worn Camera footage (**BR 08**), between 0:30 and 0:50, PO Lora tells § 87(2)(b) "I'm pulling you out of the car because you smell, you wreck, of marijuana. And I can see the marijuana on your lap... You have anything you're not supposed to have?" § 87(2)(b) responds, "No." Between 2:20 and 2:40, PO Lora stands at the rear of the car next to § 87(2)(b) and states, "Yeah, but you got all this weed on your lap and stuff." § 87(2)(b) responds, "It's not weed, it's grass." Between 4:10 and 6:08, § 87(2)(b) tells officers, "I was smoking a cigarette." PO Victoria responds, "You was not smoking a cigarette. You were smoking marijuana." § 87(2)(b) responds, "There is no marijuana." PO Lora searches the center console and the passenger side seats and footwells. The video ends.

PO Lora's Body Worn Camera footage (**BR 09**), video two of two, begins at the point that PO Lora's first Body Worn Camera video concludes. Between 0:00 and 4:12, PO Lora searches the rear seat, the driver side seats and footwells, and the glove compartment. At 0:40, PO Lora states to himself, "So much residue." It is unclear from the video to what exactly PO Lora is referring. Between 4:20 and 4:35, while PO Victoria is searching the trunk of the car, PO Victoria asks § 87(2)(b) "You got nothing in the car?" § 87(2)(b) responds, "No." PO Lora states, "Then don't worry about it."

PO Victoria (**BR 05**) testified that, upon approaching the car, he observed smoke coming from inside the car and smelled the strong odor of burnt marijuana. PO Victoria observed marijuana residue on the pants of the car's occupants. PO Lora searched the passenger compartment and informed PO Victoria that there was marijuana residue throughout the car. PO Victoria used discretion to issue a summons for the parking violation and possession of marijuana. After being shown his Body Worn Camera footage, PO Victoria acknowledged telling § 87(2)(b) that, if he did not exit the car, he would be transported to the stationhouse. PO Victoria made this statement because, given that § 87(2)(b) did not initially exit the car when requested, officers could have used discretion to transport him to the stationhouse to issue his summons. PO Victoria asked § 87(2)(b) if there were weapons in the car because § 87(2)(b) appeared nervous in the officers' presence. PO Victoria did not suspect the car's occupants of possessing weapons. PO Victoria searched the trunk of the car to determine if there were additional drugs apart from the marijuana residue in the passenger compartment.

PO Lora (**BR 06**) testified that he observed a strong odor of marijuana and marijuana residue on § 87(2)(b)'s sweatpants upon approach. PO Lora searched the passenger compartment for drugs and observed marijuana residue in the passenger side footwell and on the passenger seat. No additional contraband was recovered. When asked why the marijuana residue was not vouchered, PO Lora explained that it was finely crumpled and a vacuum would have been required to gather it. PO Lora asked the occupants if they possessed anything that they were not supposed to have because he was uncertain if any of the vehicles occupants were armed. When asked whether the car's occupants did or said anything to make him believe they were armed, PO Lora noted that § 87(2)(b) was acting erratically by holding his hand above his head and stating that he did not consent to a search of his vehicle. After being shown his Body Worn Camera footage, PO Lora acknowledged asking § 87(2)(b) "You got nothing in the car?" PO Lora explained that he made this statement because he thought that it was funny and that it would reassure the car's occupants that everything was alright.

People v. Chestnut, 43 A.D.2d 260 (1974) (**BR 17**) states that, upon detecting the odor of marijuana in a vehicle, officers may search the vehicle's occupants and the vehicle itself.

§ 87(2)(b), § 87(2)(g)
[Redacted text block]

§ 87(2)(b), § 87(2)(g), § 87(4-b)
[Redacted text block]

Civilian and Officer CCRB Histories

- § 87(2)(b)
[Redacted text block]
- § 87(2)(b)
[Redacted text block]
- § 87(2)(b)
[Redacted text block]

- Police Officer Kenny Victoria has been a member-of-service for four years and has been a subject in five other CCRB complaints and nine other allegations, one of which was substantiated.

- 201810707 involved a substantiated allegation of strip-search against PO Victoria. The Board recommended Charges and the NYPD has not yet imposed discipline.
- 201902824 involved allegations of refusal to provide name, refusal to provide shield number, and stop against PO Victoria. The case is open and the investigation is ongoing.
- § 87(2)(g) [REDACTED]
- Police Officer Ariel Lora has been a member-of-service for six years and has been a subject in two other CCRB complaints and seven other allegations, none of which were substantiated.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of September 16, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**BR 13**).
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Squad No.: Squad 4

Investigator:	Investigator Carter Salis	12/10/19
_____ Signature	_____ Print Title & Name	_____ Date
Squad Leader:	_____ Print Title & Name	_____ Date
_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Print Title & Name	_____ Date
_____ Signature	_____ Print Title & Name	_____ Date